

REMARKS

SUMMARY OF TELEPHONIC INTERVIEW

Applicants thank Examiner Jones for the courtesies extended to their representative, Kevin L. McLaren, in the telephonic interview conducted March 17, 2009. Applicants' representative and the Examiner discussed each of the rejections in the Office Action dated October 29, 2008.

First, the rejections of claims 1-4, 7, 16-19, 34, 37-38, 41, 47, 51, 64-65, and 79 under 35 U.S.C. § 112, first and second paragraphs reciting the terms "analog" and "derivative" as those terms are used in the claims with reference to vitamin receptor binding moiety, vitamin, drug, amino acid, and others, were discussed. Applicants' representative reminded the Examiner that those issues had previously been traversed in Applicants' response dated December 11, 2007, and that the Examiner had withdrawn those rejections in the subsequent Office Action, dated March 26, 2008, for reasons of record in Applicants' response. In addition, Applicants' representative made reference to the Information Disclosure Statement citing fifty-five journal articles and several issued U.S. patents that was also filed with, and in support of, Applicants' response, dated December 11, 2007.

Second, the rejection of claims 1-4, 7, 16-19, 34, 37-38, 41, 47, 51, 64-65, and 79 under 35 U.S.C. § 103(a) as being obvious over Briesewitz et al. (WO 99/61055) in view of Yang et al. (US Patent N. 7,607,111) was discussed. Applicants' representative pointed out that Yang et al. was directed exclusively to imaging, and that both Yang et al. and Briesewitz et al. required non-releasable linkers, and accordingly even the combination of the relied-upon references did not reach Applicants' claimed invention. Applicants' representative also referred the Examiner to the Declaration of Dr. Christopher P. Leamon, filed under 37 C.F.R. § 1.132, and included with Applicants' response dated December 11, 2007. Thus, even assuming arguendo that the Examiner has established a *prima facie* case of obviousness, though Applicants contend that *prima facie* obviousness has not been established, the standing rejection of claims 1-4, 7, 16-19, 34, 37-38, 41, 47, 51, 64-65, and 79 is overcome based on the unexpected results obtained with Applicants' claimed methods and compounds. Because Yang et al. is directed exclusively to imaging and Briesewitz et al. does not present any *in vivo* data whatsoever, the latter disclosing only *in vitro* binding of the disclosed compounds to polymeric peptide beads, Applicants respectfully suggest that the prior-filed Declaration of Dr. Leamon rebuts the standing rejection by demonstrating that

Applicants' claimed compounds have unexpectedly improved activities and properties that the prior art does not have.

Finally, the provisional rejection of claims 1-4, 7, 16-19, 34, 37-38, 41, 47, 51, 64-65, and 79 on the ground of nonstatutory obviousness-type double patenting over claims 1, 3-5, 7-13, and 15-22 of co-pending Application Serial No. 10/513,372 was discussed. Applicants' representative reminded the Examiner that the same rejection had previously been traversed in Applicants' response dated December 11, 2007, and that the Examiner had withdrawn that rejection in the subsequent Office Action, dated March 26, 2008, for reasons of record in Applicants' response.

Applicants' representative and the Examiner agreed that the foregoing rejections would be withdrawn.

Accordingly, and with specific reference to the restriction requirement based upon the foregoing rejection under 35 U.S.C. § 103(a), Applicants respectfully request herein that claims 5-6, 8-15, 20-33, 36-36, 39-40, 42-46, 48-50, 57-63, 68-78, and 80 are rejoined pursuant to MPEP § 821.04.

RESPONSE

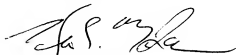
Claims 1-4, 7, 16-19, 34, 37-38, 41, 47, and 79 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-2, 4-47, and 51-52 of co-pending Application Serial No. 12/064,191. Claims 1-4, 7, 16-19, 34, 37-38, 41, 47, 51, 64-65, and 79 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 5-6, 9, 12-16, 20, 31, 41, and 49-51 of co-pending Application Serial No. 12/064,163. The standing nonstatutory obviousness-type double patenting rejections are the only two remaining rejections. In addition, the instant application was the first filed application. Accordingly, Applicants respectfully request that the two standing rejections on the ground of nonstatutory obviousness-type double patenting be withdrawn pursuant to MPEP § 804.

CONCLUSION

Applicants believe that foregoing remarks resolve all issues raised in the Office Action dated October 29, 2008, and that the instant application is in condition for allowance. Hence, Applicants request that the Examiner pass the above-captioned application to issue.

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to read 'K. L. McLaren', is written over a horizontal line.

Kevin L. McLaren

Attorney Reg. No. 48,351

KLM:jdj
Indianapolis, IN
(317) 231-7776